

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:03CR588
	)	
v.	)	
	)	
DECABOOTER FLOWERS,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the Court on the defendant's motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence (Filing No. 29) and his corrected motion to vacate, set aside or correct sentence (Filing No. 31). On March 15, 2005, the plaintiff filed a motion for reduction of sentence under Rule 35 of the Federal Rules of Criminal Procedure, based on the substantial assistance provided by the defendant (Filing No. 32). The Court granted the plaintiff's motion, reducing the defendant's sentence to 86 months (Filing No. 34). The Court then ordered the defendant to show cause why the motions to vacate his sentence should not be dismissed (Filing No. 36). The defendant filed a response, indicating that he intended to proceed with his § 2255 motion (Filing No. 38).<sup>1</sup> In his response, the defendant claims that he received ineffective assistance of counsel due to his attorney's failure to uphold his

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<sup>1</sup> The Court will consider the defendant's response as an attachment to his § 2255 motion.

rights for appeal. The Court has reviewed the remaining claims set forth by the defendant in his § 2255 motion, and finds them to be without merit.<sup>2</sup> However, the plaintiff is ordered to respond on the issue of whether the defendant received ineffective assistance of counsel due to his attorney's failure to uphold his rights of appeal. Accordingly,

IT IS ORDERED that the plaintiff shall file a response to the defendant's motion under 28 U.S.C. § 2255 on or before August 10, 2005.

DATED this 27<sup>th</sup> day of July, 2005.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court

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<sup>2</sup> The Court will articulate its reasons for this finding in a subsequent order.